


ESTATE RECOVERY PROGRAM POLICY AND ADMINISTRATIVE PROCEDURES

Effective Date: March 1, 2007

Signature: 

A. PURPOSE

The purpose of this Estate Recovery Program Policy and Administrative Procedures is to provide information about the Arizona Estate Recovery Program. Section 1917 of the Social Security Act ("the Act") requires the State Medicaid Agency to recover certain Medicaid (Title XIX) expenditures. This Estate Recovery Program Policy and Administrative Procedures is designed to meet Federal requirements and to obtain recovery of AHCCCS' Medicaid expenditures in a fair and equitable manner.

In addition to being subject to the Estate Recovery process, which is covered in this Policy, a member may have had a TEFRA lien placed on their real property prior to their death. See the separate "TEFRA LIEN POLICY AND ADMINISTRATIVE PROCEDURES" for additional information on the TEFRA Lien program and process.

B. AUTHORITY

Section 1917 (b) of the Social Security Act
A.R.S. §§ 36-2915, 36-2935
42 CFR § 433.36
A.A.C. R9-28-910, 911 and 912
Medicaid Manual, Part 3-Eligibility, Section 3810

AHCCCS retains sole ownership of these policy and administrative procedures and retains decision-making authority regarding the program operations. The AHCCCS Third Party Liability Contractor (TPL Contractor), is required to follow the policy and procedures delineated in this document and is not authorized to make changes to the program. A copy of this document is maintained in the AHCCCS Estate Recovery Program Operations Manual which is utilized by the TPL Contractor to conduct its day-to-day operations of the program.

C. BACKGROUND

The AHCCCS Administration receives federal, state, and county funds to operate the program. Effective October 1, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended Section 1917 of the Act. The change in law required all states to implement an estate recovery program. At a minimum, the states must recover Title XIX payments for nursing facility services, home and community-based services, and related hospital and prescription drug facility services provided to Medicaid individuals age 55 and older. States that provide Medicaid services through a managed care organization that are included under the State's plan for estate recovery, must seek recovery from the individual's estate for the premium (capitation) payments in its claim against the estate. States that elect to recover all services under the state plan, must recover from the individual's estate the total capitation rate for the period the Medicaid individual was enrolled in the managed care organization. AHCCCS has elected under its State Plan, to recover all Medicaid (ALTCS) services. AHCCCS therefore files its

estate claim against estates to include the total capitation payments paid during the ALTCS enrollment period. AHCCCS files its estate claim against the estates of individuals, who at age 55 or older, received ALTCS services on or after January 1, 1994. AHCCCS does not include in its estate claim calculation any expenditures incurred during a period of acute care enrollment, as AHCCCS was granted the authority to exempt those costs from estate recovery.

AHCCCS recovers the following ALTCS expenditures for both developmentally disabled, and the elderly and physically disabled individuals:

1. Capitation payments;
2. Medicare Part A and Part B premiums;
3. Reinsurance payments;
4. Fee-For-Service payments; and
5. Medicare coinsurance and deductibles paid by AHCCCS.

OBRA '93 placed limitations on recovery. Recovery can not be sought when there is an Estate Claim Statutory Exemption. An Estate Claim Statutory Exemption exists when there is a surviving spouse, a surviving child under the age of 21, or a surviving child of any age who is blind or disabled and meets SSA or SSI disability criteria. OBRA '93 also requires that recovery not be sought when any one of the heirs to the estate meets all of a state's criteria for undue hardship. States are required to establish undue hardship standards and procedures in accordance with CMS' policy under which recovery of expenditures will be waived when such recovery would cause an undue hardship. AHCCCS waives its estate claim against the AHCCCS member's estate when there is a qualifying Estate Claim Statutory Exemption or when any one of the heirs to the estate meets all of AHCCCS' Undue Hardship criteria. If there is no qualifying Estate Claim Statutory Exemption and no heir to the estate meets all of AHCCCS' undue hardship criteria, AHCCCS will consider a Partial Recovery (Reduction) of the estate claim. AHCCCS may additionally undertake a Partial Recovery to avoid an undue hardship situation. The Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim and Partial Recovery (Reduction) processes are discussed in detail in Section E(7) to Section E(12) herein.

ALTCS applicants are provided information regarding AHCCCS' Estate Recovery Program and the estate claim in the ALTCS application form. Additionally, ALTCS applicants are provided an AHCCCS pamphlet titled *State of Arizona Medicaid Assistance Estate Recovery Program*. The pamphlet is also provided to interested parties upon request. The pamphlet provides detailed information regarding:

1. The authority for the Estate Recovery Program and estate claim;
2. Information regarding the estate claim filing process;
3. AHCCCS Medicaid expenditures that are recovered;
4. Information regarding TEFRA liens;
5. Information regarding the program notices and correspondence;
6. Information regarding the circumstances when AHCCCS will waive or reduce its estate claim; and
7. Information regarding the grievance and request for hearing process.

D. DEFINITIONS

1. Administration

The Arizona Health Care Cost Containment System Administration (AHCCCSA).

2. Administrative Costs and Expenses

Costs and expenses incurred during the administration of a deceased AHCCCS member's estate that are paid from the assets of the estate in accordance with A.R.S. § 14-3805.

3. Capitation Payments

The AHCCCS program is based on cost containment through preventative care rather than emergency care. AHCCCS contracts with program contractors which in turn are responsible to ensure the delivery of all covered medical services to ALTCS members. AHCCCS pays program contractors a monthly capitation payment prospectively for each enrolled ALTCS member regardless of whether the AHCCCS member received a medical service during the capitated month.

4. Decedent

An AHCCCS member, who at age 55 or older, on or after January 1, 1994, was enrolled in ALTCS (Medicaid) and who has died.

5. Estate

The probate definition of estate as defined in A.R.S. § 14-1201.16 includes "the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title." Property, as defined in A.R.S. § 14-1201.41, "includes both real and personal property or any interest in real and personal property and means anything that may be the subject of ownership."

6. Estate Claim

AHCCCS files an estate claim against the AHCCCS member's estate. The AHCCCS estate claim that is filed against the AHCCCS member's estate is the total of the AHCCCS Title XIX (ALTCS) expenditures that were incurred by AHCCCS during the AHCCCS member's ALTCS enrollment period when the AHCCCS member was age 55 and older, minus the total of the share-of-cost payments that were paid by the AHCCCS member during the ALTCS enrollment period. The amount of the AHCCCS estate claim is made up of the following ALTCS expenditures:

- a. Capitation payments;
- b. Medicare Part A and Part B premiums;
- c. Reinsurance payments;
- d. Fee-for-Service payments; and
- e. Medicare coinsurance and deductibles paid by AHCCCS.

AHCCCS' capitation rate includes Medicare coinsurance and deductibles paid by program contractors. Fee-For-Service payments for Medicare coinsurance and deductibles are for claims paid directly by the AHCCCS Administration.

The AHCCCS expenditures are verified via the Prepaid Medical Management Information System (PMMIS).

AHCCCS' estate claim must be paid in accordance with A.R.S. §§ 14-3971 and 14-3807.

7. Estate Claim Statutory Exemption

Recovery cannot be sought when there is a qualifying Estate Claim Statutory Exemption. An Estate Claim Statutory Exemption exists when there is a surviving spouse, a surviving child under age 21, or a surviving child of any age who is blind or disabled and meets SSA or SSI disability criteria. AHCCCS will waive its estate claim against the AHCCCS member's estate when there is a qualifying Estate Claim Statutory Exemption.

8. Estate Recovery Program

The AHCCCS recovery program for recovering ALTCS (Title XIX) expenditures, from the estate of an AHCCCS member, who at age 55 or older, was enrolled in ALTCS and who died. The program was implemented in accordance with OBRA '93.

9. Fee-for-Service Payments

Prior to enrollment with a program contractor, and the payment of the capitation payment, AHCCCS may be responsible for payment of some or all of an AHCCCS member's medical bills not covered by Medicare or other available insurance. These payments are called Fee-For-Service payments.

10. Fiduciary

As defined in A.R.S. § 14-1201.18, fiduciary includes a personal representative, guardian, conservator, and trustee. Black's Law Dictionary defines Fiduciary in part as: "A person or institution who manages money or property for another and who must exercise a standard of care in such management activity imposed by law or contract (e.g., executor or estate)."

11. Heir

As defined in A.R.S. § 14-1201.23, heirs, except as controlled by section 14-2711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

12. Household

An heir to the estate and persons living with the heir who are related as a spouse, a dependent child, or the parent of a dependent child or anyone who is considered to be in a dependent status for income tax purposes.

13. Medicare Coinsurance and Deductibles

Medicare provides health insurance to people age 65 and over, those who have permanent kidney failure, and certain people under age 65 with disabilities. Medicare requires cost sharing in the form of deductibles and coinsurance. AHCCCS may be responsible for the payment of the AHCCCS member's coinsurance and deductible payments prior to enrollment with the program contractor.

14. Medicare Part A and Part B Premiums

Medicare provides health insurance to people age 65 and over, those who have permanent kidney failure, and certain people under age 65 with disabilities. Medicare requires cost sharing in the form of premiums. AHCCCS recovers all Medicare Part A and B premium payments paid to the Social Security Administration on behalf of the AHCCCS member.

15. Partial Recovery (Reduction)

If there is no qualifying Estate Claim Statutory Exemption or Undue Hardship Waiver of Estate Claim, AHCCCS will consider a Partial Recovery (Reduction) of the estate claim. AHCCCS additionally may undertake Partial Recovery to avoid an undue hardship situation. The Partial Recovery (Reduction) application and determination process is discussed in Section E(12) herein.

16. Personal Representative

As defined in A.R.S. § 14-1201.38, personal representative includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status.

17. Program Contractor

AHCCCS contracts with program contractors which in turn are responsible to ensure the delivery of all covered medical services to ALTCS members. AHCCCS pays program contractors a monthly "capitation" payment prospectively for each enrolled ALTCS member. The program contractor is then "at risk" to deliver the necessary services within the capitated amount. AHCCCS pays a monthly capitation payment to the program contractor for each month the ALTCS member is enrolled, regardless of whether the AHCCCS member received a medical service during the month.

18. Property

As defined in A.R.S. § 14-1201.41, property includes both real and personal property or any interest in real and personal property and means anything that may be the subject of ownership.

19. Public Fiduciary

An individual who is assigned by the court and entrusted with handling the legal affairs of individuals. Public fiduciaries often serve in the capacity of a Personal Representative. See definition of Fiduciary.

20. Reinsurance Payments

A risk-sharing program provided by the AHCCCS Administration to program contractors for the reimbursement of certain contract service costs incurred by an ALTCS member that are beyond a certain monetary threshold. Therefore, in addition to the monthly capitation payment, AHCCCS may make a reinsurance payment to a program contractor.

21. Share-of-Cost

ALTCS members are required to pay, based on a calculation set by Federal law, a certain amount of their income towards the cost of their care. AHCCCS allows the share-of-cost payments that were paid by the AHCCCS member during the recovery period to be deducted from the total AHCCCS expenditures that AHCCCS paid during the recovery period. The share-of-cost payments are verified via the Prepaid Medical Management Information System (PMMIS), Long Term Care Eligibility Determination System (LEDS). The Share of Cost History Screen LT 525, "SOC" Column, verifies the share-of-cost payments to be allowed as a deduction. If notified by the program contractor or nursing home that the AHCCCS member has outstanding share-of-cost payments for any month of the recovery period, the outstanding share-of-cost payment for that month will not be allowed as a deduction unless verification is received that the outstanding payment has been paid.

22. Special Administrator

As defined in A.R.S. § 14-1201.48, special administrator means a personal representative as described by §§ 14-3614 through 14-3618.

23. TPL Contractor

The entity with which AHCCCS contracts to conduct its Estate Recovery Program. The current TPL Contractor is Health Management Systems, Inc.

24. Undue Hardship Waiver of Estate Claim

AHCCCS will waive its estate claim against the AHCCCS member's estate if any one of the heirs to the estate meets AHCCCS' undue hardship criteria. Undue Hardship Waiver of Estate Claim is discussed in Section E(9) herein. AHCCCS' undue hardship criteria for a waiver of the estate claim follows federally suggested guidelines.

E. RECOVERY PROCESS

1. The TPL Contractor identifies potential cases utilizing referrals provided by AHCCCS and other sources. Referrals include, but are not limited to:
 - a. AHCCCS' automated eligibility system ;
 - b. Authorized representative;
 - c. Estate representative;
 - d. Personal representative;
 - e. Public fiduciary;

- f. Probate court; or
 - g. Newspaper clipping service.
2. Once a referral is received by the TPL Contractor from AHCCCS or other referral source, the TPL Contractor files a *Demand for Notice* with the Superior (Probate) Court in the county of residence, county of death, and county of property ownership, as appropriate to the individual case to:
 - a. Require notice to AHCCCS of all orders and filings regarding the AHCCCS member's estate; and
 - b. Assist in protection of the State's interest in any future estate proceeding.
 3. Once the TPL Contractor files a *Demand for Notice* with the Superior Court, and a potential estate recovery case is identified, the TPL Contractor mails the personal representative a *Notice of Intent to File a Claim Against the Estate*, an *Estate Questionnaire*, and a copy of the *Demand for Notice* that was filed with the Superior Court(s).
 - a. The *Notice of Intent to File a Claim Against the Estate*:
 - (1) Expresses condolences;
 - (2) Introduces Federal and State Laws authorizing AHCCCS to seek reimbursement for AHCCCS ALTCS expenditures for the AHCCCS member;
 - (3) Explains the *Demand for Notice* filed with the Superior (Probate) Court, and
 - (4) Informs the estate that A.R.S. § 36-2935(B) provides that a member's Personal Representative must notify the Administration of the member's estate or property within three months after the member's death if the member was at least fifty-five years of age and the Administration has not already filed a statement of claim in the estate proceedings.
 - b. The *Estate Questionnaire*:
 - (1) Inquires about Estate Claim Statutory Exemptions and lists documents to provide if there is a:
 - (a) Surviving spouse of the AHCCCS member;
 - (b) Surviving child of the AHCCCS member who is under age 21;
 - (c) Surviving child of the AHCCCS member of any age who is blind or disabled.
 - (2) Inquires about property transfers since ALTCS eligibility was determined.
 - (3) Inquires about real and personal property owned by the AHCCCS member.
 - (4) Requests name and address of attorney or personal representative.
 - (5) Asks if there has been or will be a petition filed for probate of the estate, and if so, date filed and county court in which filed.
 - (6) Provides information regarding where to send the completed form, timeframes for submitting, and whom to contact with any questions.

The TPL Contractor closes the estate case if documentation is provided that verifies the estate qualifies for an Estate Claim Statutory Exemption, and if requested to do so by the personal representative or heir, files a withdrawal of the *Demand for Notice* with the Superior (Probate) Court. The AHCCCS *Demand for Notice* that is left on file at the Superior (Probate) Court does not have any legal impact to heirs.

4. Upon identification that an AHCCCS member has an estate that will be filed by Small Estate Affidavit or probated, and no qualifying Estate Claim Statutory Exemption has been identified, the TPL Contractor files a *Superior Court Claim Against the Estate* with the Superior Court to provide information to the Court and interested parties that the estate is indebted to AHCCCS, and the amount to which the estate is indebted. The TPL Contractor mails a copy of the *Superior Court Claim Against the Estate* to the personal representative along with the documents that are described in 5. below.
5. Upon filing a *Superior Court Claim Against the Estate*, the TPL Contractor mails a *Notification of the AHCCCS Claim Against the Estate* to the personal representative.
 - a. The *Notification of the AHCCCS Claim Against the Estate* includes the following enclosures:
 - (1) *Application Form For Estate Claim Statutory Exemption, Undue Hardship Waiver, Or Partial Recovery Of The AHCCCS Claim Against The Estate*;
 - (2) *Chronology of AHCCCS Long Term Care Medical Payment History*; and
 - (3) Copy of the *Superior Court Claim Against the Estate* that was filed with the Superior (Probate) Court.
 - b. The *Notification of the AHCCCS Claim Against the Estate* provides the following information:
 - (1) Explanation of the Estate Recovery Program;
 - (2) AHCCCS estate claim amount and an itemization of AHCCCS expenditures to be recovered;
 - (3) Authority for the AHCCCS estate claim;
 - (4) Estate Claim Statutory Exemption criteria for a waiver of the estate claim and documentation required to support the criteria. An Estate Claim Statutory Exemption for a waiver of the estate claim exists when the AHCCCS member is survived by a :
 - (a) Surviving spouse;
 - (b) Surviving child who is under age 21; or
 - (c) A surviving child of the who is blind or disabled.
 - (5) Undue Hardship Waiver of Estate Claim criteria, and documentation required to support the criteria;
 - (6) Partial Recovery criteria, and documentation required to support the criteria;
 - (7) Explanation of the enclosed application form and the application process for applying for one or more of the three processes: Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery;
 - (8) Timeframes for filing a completed application;
 - (9) To whom and where to file the application and supporting documentation;
 - (10) Whom to contact if there are any questions; and
 - (11) The heir's right to file a grievance and request a hearing and a description of the grievance and request for hearing process.
6. The personal representative is responsible for notifying the heirs and, if the heirs so choose, filing a request for an Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or a Partial Recovery. Heirs are responsible to provide supporting documentation. Applications must be submitted in writing with supporting documentation

within 30 days from the date shown on the *Notification of the AHCCCS Claim Against the Estate*.

7. An heir may apply to receive an Estate Claim Statutory Exemption or Undue Hardship Waiver of Estate Claim or a reduction of the estate claim under the Partial Recovery process based on his or her circumstances. Application and supporting documentation are reviewed first for an Estate Claim Statutory Exemption, followed by an Undue Hardship Waiver of Estate Claim, and lastly, Partial Recovery dependant on the process(es) applied for, and the Decision(s) rendered.
8. If supporting documentation for an Estate Claim Statutory Exemption is provided to establish a qualifying Estate Claim Statutory Exemption, the TPL Contractor reviews the supporting documentation and renders a decision. If the TPL Contractor determines there is a qualifying Estate Claim Statutory Exemption, the TPL Contractor files a withdrawal of the *Superior Court Claim Against the Estate* with the Superior (Probate) Court, sends a *Decision Notice Regarding the AHCCCS Estate Claim* and a copy of the withdrawal of the *Superior Court Claim Against the Estate* to the personal representative or heir advising that the estate claim has been waived, and closes the case. No further action is taken.
9. If there is no qualifying Estate Claim Statutory Exemption, and the application section of the application form has been completed for consideration of an Undue Hardship Waiver of Estate Claim, the application and supporting documentation are reviewed for a qualifying Undue Hardship Waiver of Estate Claim. The TPL Contractor reviews the application and supporting documentation and makes a recommendation to AHCCCS. AHCCCS waives its estate claim against the AHCCCS member's estate when any one of the heirs to the estate meets AHCCCS' undue hardship criteria. The criteria in AHCCCS' undue hardship criteria applies to situations when the estate contains: a. Real Property assets only or both Real and Personal Property assets and b. Personal Property assets only. AHCCCS' undue hardship criteria is described in a. and b. below:
 - a. AHCCCS will waive its estate claim against the AHCCCS member's estate when the estate contains Real Property assets only or both Real and Personal Property assets, and
 - (1) The Real Property in the estate is listed as residential property by the Arizona Department of Revenue or County Assessor's Office; and
 - (2) Any one of the heirs to the estate meets all of the criteria listed in either (a.) through (d.) below or (e.) through (h.) below:
 - (a) Owns a business that is located at the residential property;
 - (b) The business has been in operation at the residential property for at least 12 months preceding the AHCCCS member's death;
 - (c) The business provides more than 50% of the heir(s) livelihood; and
 - (d) The recovery of the property would result in the heir(s) to the estate losing their means of livelihood.
 - Or
 - (e) Currently resides in the residence;
 - (f) Resided there at the time of the AHCCCS member's death;
 - (g) Has made the residence his or her primary residence for the 12 months immediately preceding the AHCCCS member's death; and

- (h) Owns no other residence.
- b. AHCCCS will waive its estate claim against the AHCCCS member's estate when the estate contains Personal Property assets only, and any one of the heirs to the estate meets all of the criteria listed in both (1) and (2) below:
 - (1) The heir(s) annual gross income for their household size is less than the federal income poverty guidelines. New sources of income (for example, employment, Social Security, etc.) will be included in determining the household's annual gross income; and
 - (2) The heir does not own a home, land, or other real property.
- 10. If AHCCCS determines there is a qualifying Undue Hardship Waiver of Estate Claim, the TPL Contractor files a withdrawal of the *Superior Court Claim Against the Estate* with the Superior (Probate) Court, sends a *Decision Notice Regarding the AHCCCS Estate Claim* and a copy of the withdrawal of the *Superior Court Claim Against the Estate* to the personal representative or heir, and closes the case. No further action is taken.
- 11. A withdrawal of the *Superior Court Claim Against the Estate* releases both an AHCCCS estate claim against an estate filed by Small Estate Affidavit or probated.
- 12. If there is no qualifying Estate Claim Statutory Exemption or Undue Hardship Waiver of Estate Claim, and the personal representative or heir has completed the application section of the *Application Form For Estate Claim Statutory Exemption, Undue Hardship Waiver, or Partial Recovery Of The AHCCCS Claim Against The Estate* for a Partial Recovery, the TPL Contractor reviews the application and supporting documentation and makes a recommendation to AHCCCS. AHCCCS may undertake partial recovery to avoid an undue hardship situation.
 - a. The factors that AHCCCS considers on a case-by-case basis when reviewing application requests and supporting documentation for a Partial Recovery include:
 - (1) Financial and medical hardship to the heir(s);
 - (2) Income of the heir(s) and whether the household income is within 100% of the Federal Poverty Guidelines;
 - (3) Resources of the heir(s);
 - (4) Value and type of assets in the estate (real and personal);
 - (5) Amount of the AHCCCS claim against the estate;
 - (6) Whether other creditors have filed claims against the AHCCCS member's estate or have foreclosed on the property; or
 - (7) Any other factors relevant for a fair and equitable determination under the circumstances of a particular case.
 - b. If AHCCCS determines there is a qualifying condition for a Partial Recovery, the TPL Contractor sends a *Decision Notice Regarding the AHCCCS Estate Claim* to the personal representative or heir, and advises them of the approval for a reduction of the estate claim and the new claim amount represents the amount due. The TPL Contractor closes the case when payment of the reduced estate claim is paid in full.

- c. AHCCCS will not grant a Partial Recovery of the estate claim when there are sufficient assets in the estate to pay the estate claim and provide for the heir. AHCCCS' decision to grant a Partial Recovery does not wave or release its remaining claim against the estate of the AHCCCS member.
13. If AHCCCS denies an application for an Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery, the TPL Contractor mails a *Decision Notice Regarding the AHCCCS Estate Claim* to the personal representative and sends a copy of the decision notice to the heir. The *Decision Notice Regarding the AHCCCS Estate Claim* informs the personal representative and heir that AHCCCS has denied the application(s) and the full amount of AHCCCS' claim remains in force. The estate will be released when all available funds have been collected.
14. The *Decision Notice Regarding the AHCCCS Estate Claim* includes the following information:
- a. Decision regarding application for Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery as applicable to the specific case;
 - b. Reasons why the application was approved/denied;
 - c. The amount due and payable to AHCCCS, if any;
 - d. Instructions where to send the payment;
 - e. Whom to contact to answer any questions; and
 - f. The heir's right to file a grievance and request a hearing.
15. If the representative and/or heir(s) disagree with AHCCCS' Decision, they may file a grievance with the AHCCCS Administration. The grievance must be submitted in writing and must be received by the AHCCCS Administration, Office of Administrative Legal Services (OALS) , Mail Drop 6200, P.O. Box 25520, Phoenix, Arizona 85002, no later than 60 days of the date shown on the *Decision Notice Regarding the AHCCCS Estate Claim*.
- a. When a grievance is received, the OALS will either:
 - (1) Review the agency action and issue a final agency decision within 30 days (which final decision can then be appealed to a fair hearing); or
 - (2) Schedule the matter directly to hearing before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH).
 - b. If OALS reviews the grievance and renders a decision, OALS sends the grievance decision, which contains information regarding the right to request a hearing at OAH, to the Complainant. Requests for hearing of OALS's decision must be submitted in writing and mailed, faxed, or hand delivered to OALS so that it is received by OALS not later than 35 days from the date of the OALS grievance decision notice.
 - c. If an administrative hearing is held concerning an estate matter, the ALJ issues a Recommended Decision to the Director of AHCCCS within 20 days of the conclusion of the hearing.
 - d. Within 30 days of receipt of the Recommended Decision, the AHCCCS Director issues a Director's Decision, which will adopt, modify, or reject the ALJ's Recommended Decision. A copy of the Director's Decision is mailed to all parties with information

regarding filing a Motion for Rehearing or Review of the Director's Decision and appealing the Director's Decision to court. Additional information about the grievance process is found in Arizona Administrative code, Chapter R9-28-801 et seq.

16. If the assets of the AHCCCS member's estate are insufficient to pay all estate claims in full, the creditors of the estate are paid according to the priority of payment of estate claims as set forth by the Arizona Probate Code, A.R.S. § 14-3805. Statute provides that the personal representative of the estate shall pay expenses and creditors of the estate in the following order:
 - a. Costs and expenses of administration, which includes:
 - (1) Attorney's fees;
 - (2) Probate Court fees;
 - (3) Reasonable compensation of the personal representative or administrator;
 - (4) Reasonable costs associated with the maintenance and repair of the real property of the estate; and
 - (5) Other expenses reasonably related to the administration of the estate as determined by AHCCCS.
 - b. Reasonable funeral expenses.
 - c. Debts and taxes with preference under federal law.
 - d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.
 - e. Debts and taxes with preference under the laws of this state.
 - f. All other claims.
17. In addition to the three processes for consideration of waiving or reducing the estate claim, AHCCCS will waive its AHCCCS estate claim when recovery is not cost effective. No initial cost threshold is applied and all potential cases are worked for recovery. However, should an estate enter into litigation, a \$5,700 litigation cost threshold has been established which is applied at the point of litigation to determine whether it is cost effective to pursue recovery. Cases are worked in the order of priority using the amount of the AHCCCS estate claim and the amount of estate assets as guidelines.
 - a. The following factors are taken into consideration in determining whether it is cost effective to pursue recovery:
 - (1) The claim amount;
 - (2) The priority of the estate claim;
 - (3) Other creditors and the amounts of their estate claims;
 - (4) Total estate assets;
 - (5) The number of surviving heir(s) to the estate;
 - (6) Legal and administrative costs necessary to obtain recovery; and
 - (7) Consequences of an unfavorable judicial decision.
 - b. The litigation threshold of \$5,700 is based on the following methodology:
 - (1) \$2,000 allowance for estate claim litigation threshold;
 - (2) \$3,200 for attorney fees; and
 - (3) \$500 for miscellaneous expenses (for example, preparing the case for turnover to attorneys, briefing attorneys, or negotiations with estate executor).

18. The AHCCCS Administration's contract with the TPL Contractor delineates responsibility of the parties and any sanctions AHCCCS will impose for non-compliance. To ensure compliance with AHCCCS' policy and administrative procedures, AHCCCS performs oversight of the TPL Contractor through, but not necessarily limited to:
 - a. Monitoring the TPL Contractor for compliance of the contract requirements specified in the Contract between AHCCCS and the TPL Contractor;
 - b. Analyses and quality control of monthly management, financial, and operational reports;
 - c. Periodic discussion of deliverables and case related issues;
 - d. Review of hard copy case files and case related data base information.
19. Additional information about the estate recovery process, including exhibits of correspondence, are contained in the AHCCCS Estate Recovery Program Operations Manual.

F. REQUESTS FOR REFUNDS

If an heir or personal representative disagrees with the estate claim amount that was paid to AHCCCS, or in the event AHCCCS received an overpayment of its estate claim, an AHCCCS Request for Refund Form must be completed and submitted to AHCCCS along with appropriate supporting documentation. The TPL Contractor will submit the Request for Refund form to AHCCCS within 30 days from the date of the written refund request from the interested party or the discovery of the overpayment. AHCCCS will review the request for refund along with the estate case file and supporting documentation provided, and render a decision as to the appropriateness of issuing a refund. The TPL Contractor will provide notice to the heir or personal representative regarding AHCCCS' decision. The decision notice will include the following information:

1. Reasons why the refund was approved/denied;
2. Whom to contact to answer any questions; and
3. The heir or personal representative's right to file a grievance and request a hearing.

Additional information regarding the policy and procedures for processing requests for refunds is contained in the AHCCCS Estate Recovery Program Operations Manual.